

Given
Dismissal
of DOES

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2007 NOV 30 PM 4:10
FILED
U.S. DISTRICT COURT
CENTRAL DISTRICT OF CALIF.

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8 UNITED STATES DISTRICT COURT
9 CENTRAL DISTRICT OF CALIFORNIA

CV07-07841 SVW (JWJ) (K)

10 James Selth, individually and on
11 behalf of all others similarly
situated,

12 Plaintiff,

13 v.

14 Nissan North America, Inc.,
15 Nissan Motor Co. Ltd., and DOES
1 through 500.

16 Defendants.

Case No.

CLASS ACTION COMPLAINT
FOR:

1. Violations of 49 U.S.C. §§ 3270(1)-(2); 32710
2. Violations of *California Business & Professions Code* §17200, et seq.
3. Violations of *California Business & Professions Code* §17500, et seq.
4. Violations of *California Civil Code* § 1750 et seq.
5. Common Law Fraud
6. Negligent Misrepresentation
7. Unjust Enrichment
8. Common Count for Money Had And Received

JURY TRIAL DEMANDED

I/S
20

25 TO THE HONORABLE UNITED STATES DISTRICT COURT:

26 Plaintiff James Selth ("Selth" or the "Plaintiff), on behalf of himself and all
27 other similarly situated persons and entities, complains of the actions of Defendants

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1 Nissan North America, Inc., Nissan Motor Co., Ltd., (collectively, "Nissan" or the
2 "Defendants"), and respectfully shows the following:

3 PARTIES

4 1. Plaintiff Selth is and at all times relevant herein was a citizen and resident of
5 Los Angeles, Los Angeles County, California.

6 2. Defendant Nissan North America, Inc. is a California corporation with its
7 principal places of business in Smyrna, Tennessee. Defendant Nissan North America,
8 Inc. may be served with Summons and a copy of the Original Class Action
9 Complaint (the "Complaint") by serving its registered agent for service of process,
10 Lexis Nexis Document Solutions, Inc. 421 West Main Street, Frankford, California
11 40601.

12 3. Defendant Nissan Motor Company, Ltd. is a Japanese corporation with its
13 principal place of business in Tokyo, Japan. Selth will request a waiver of formal
14 service from Defendant Nissan Motor Company, Ltd., pursuant to FED. R. CIV. P.
15 4(d), and, if denied, will seek to serve the Complaint via the Hague Convention.

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17 4. Defendants Nissan Motor Co., Ltd. and/or Defendant Nissan North America,
18 Inc. design, manufacture, market, sell, lease and/or distribute motor vehicles to
19 consumer and business customers throughout the United States, including the Central
20 District of California, under the brand names "Nissan" and "Infiniti." The "Nissan"
21 and "Infiniti" brand names hereafter together will be referred to as "Nissan."

22 5. Plaintiff is currently ignorant of the true names and capacities, whether
23 individual, corporate, associate, or otherwise, of the defendants sued herein under the
24 fictitious names Does 1 through 50, inclusive, and therefore, sue such defendants by
25 such fictitious names. Plaintiff will seek leave to amend this complaint to allege the
26 true names and capacities of said fictitiously named defendants when their true names
27 and capacities have been ascertained. Plaintiff is informed and believes and thereon
28 alleges, that each of the fictitiously named Doe defendants is legally responsible in

1 some manner for the events and occurrences alleged herein, and for the damages
2 suffered by the class.

3 6. Plaintiff is informed and believes and thereon alleges that all defendants,
4 including the fictitious Doe defendants, were at all relevant times acting as actual
5 agents, conspirators, ostensible agents, partners and/or joint venturers and employees
6 of all other defendants, and that all acts alleged herein occurred within the course and
7 scope of said agency, employment, partnership, and joint venture, conspiracy or
8 enterprise, and with the express and/or implied permission, knowledge, consent,
9 authorization and ratification of their co-defendants; however, each of these
10 allegations are deemed "alternative" theories whenever not doing so would result in
11 a contradiction with the other allegations.

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II. JURISDICTION AND VENUE

14 7. This Court has jurisdiction over this case, pursuant to 28 U.S.C. § 1331,
15 because Selth's claims arise, in part, under the laws of the United States. This Court
16 also has diversity jurisdiction over this case, pursuant to 28 U.S.C. § 1332(d)(2)(A),
17 as amended by Public Law 109.2, 119 Stat. 4 (2005), because the proposed Class
18 exceeds 100 members, the amount in controversy exceeds the sum of \$5 million
19 (exclusive of interest and costs), and Class members are citizens of a state different
20 than the states in which the Defendants are citizens.

21 8. At all relevant times, Nissan resided, was found, had an agent or transacted
22 business in the State of California, including the Central District of California. A
23 substantial part of the unlawful conduct giving rise to the claims of Selth and the
24 Class members occurred in the Central District of California. Venue, therefore, is
25 proper in the Central District of California pursuant to 28 U.S.C. § 1391 (a).

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III. FACTUAL BACKGROUND

27 9. In 2005, Selth purchased a new Nissan Altima designed, manufactured and
28 marketed by Nissan, from Nissan Cerritos in Cerritos California.

1 10. As part of his bargain, Selth also purchased from Nissan an extended warranty
2 against all manufacturing defects.

3 11. In connection with the purchase and sale of the car and its warranties, Nissan
4 impliedly represented to Selth that the car's odometer would accurately record the
5 number of miles actually traveled by the vehicle.

6 12. In truth, and without Selth's knowledge and/or Nissan's disclosure, Nissan
7 intentionally designed the car's odometer to inflate the mileage travelled by the car
8 by a factor of not less than two percent (2%) under normal conditions.

9 13. Nissan achieved this odometer over-registration by installing a computer
10 software device that altered the odometer's performance by an amount
11 exceeding the odometer manufacturer's design tolerance. Nissan also intentionally
12 adopted a uniform, biased odometer performance standard that intentionally
13 accelerated the odometers installed in all Nissan vehicles in the United States.

14 14. Nissan's conduct is not the result of neglect or indifference, but an intentional
15 effort to defraud American consumers by, inter alia, causing the odometers installed
16 in all of the Nissan vehicles owned and/or leased by Selth and the Class members to
17 over-register the number of miles actually travelled.

18 15. Nissan's scheme already has deprived (and will continue to deprive) Selth and
19 the Class members of the benefit of their bargains by, inter alia, shortening their
20 warranties, diminishing the number of miles allowed to be driven under their vehicle
21 leases and causing them to pay excess mileage charges and/or diminishing the resale
22 value of their vehicles.

23 16. As a result of its scheme, Nissan stands to reap, has reaped and will continue
24 to reap financial benefits in the form of warranty repair savings and/or excess lease
25 mileage charges to the financial detriment of Selth and the Class members. The resale
26 value of the Nissan vehicles owned by Selth and the Class
27 members also has been diminished.

28

IV. CLASS ACTION ALLEGATIONS

17. Selth brings this action on behalf of himself and the following Class and subclass of similarly situated individuals and entities:

GLOBAL CLASS

All persons and entities who purchased or leased a new Nissan or Infiniti vehicle with a mileage based warranty or excess lease mileage charges anywhere in the United States, within the last four years from the filing of the Complaint in this action through the date of final judgment.

CLRA SUBCLASS

All consumers who purchased a new Nissan or Infiniti vehicle with a mileage based warranty or excess lease mileage charges for family or household purposes anywhere in the United States, within the last four years from the filing of the Complaint in this action through the date of final judgment.

The proposed Class and subclass specifically excludes all federal, state and local governmental entities, the presiding United States District Court Judge, the Justices of the United States Court of Appeals for the Ninth Circuit and the United States Supreme Court, and the Defendants and their officers, agents, directors and employees (and all persons related to within the third degree of consanguinity or affection to any of the foregoing).

18. The individual joinder of all of the members of the proposed Class is impractical. FED. R. CIV. P. 23(a)(1). While the exact number, identity and location of Class members is presently known only to Nissan, on information and belief, the proposed Class includes hundreds of thousands of individuals and entities dispersed geographically throughout the United States.

19. Questions of law and fact common to all Class members predominate over any questions affecting only individual Class members (Fed. R. Civ. P. 23(a)(2)) including, inter alia:

a. Whether Nissan adopted and implemented a uniform odometer performance standard for all of its vehicles?

b. Whether Nissan installed a computer device to alter the performance of the odometers in its vehicles in violation of federal law?

1 c. Whether the odometer performance standards adopted and implemented by
2 Nissan causes the odometers installed in its vehicles to over-register the mileage
3 actually driven?

4 d. Whether installation of the computer device in Nissan vehicles causes the
5 odometers to over-register the mileage actually driven?

6 e. Whether Selth and the Class members are entitled to actual damages,
7 statutory penalties, attorneys' fees, litigation expenses and costs and, if so, the
8 proper measures and amounts?

9 20. Selth's claims are typical of the claims of the Class. FED. R. CIV. P.
10 23(a)(3). Selth possesses the same interests and has suffered the same injuries as
11 the unnamed Class members. Selth asserts identical claims and seeks identical
12 relief on behalf of the unnamed Class members. Selth has no interests antagonistic
13 to the interests of the other Class members.

14 21. Selth will fairly and adequately represent and protect the interests of the
15 Class members. Fed. R. Civ. P. 23(a)(4). Selth has retained competent counsel
16 experienced in complex commercial litigation, automobile manufacturer litigation,
17 warranty litigation and class actions to represent him and the Class.

18 22. This class action also provides a fair and efficient method for adjudicating
19 the claims of the Plaintiffs and Class members for the following reasons:

20 a. Common questions of law and fact predominate over any question affecting
21 any individual Class member;

22 b. The prosecution of separate actions by individual Class members would
23 likely create a risk of inconsistent or varying adjudications with respect to
24 individual Class members, thereby establishing incompatible standards of conduct
25 for the Defendants and/or would allow some Class members' claims to adversely
26 affect the ability of other Class members to protect their interests;

27 c. Selth anticipates no difficulty in the management of this litigation as a class
28 action; and

1 d. The Class is readily ascertainable. Prosecution as class action will eliminate the
2 possibility of repetitious litigation while also providing redress for claims that may
3 be too small to support the expense of individual, complex litigation.

4 23. Moreover, the prosecution of individual actions by hundreds of thousands
5 of Nissan owners and lessees would unduly burden the courts and the litigants.
6 Given the relatively small cost necessary to repair or replace the defective
7 odometer, it is unreasonable to require or expect Class members to litigate their
8 claims individually. Conversely, prosecution of this case as a class action
9 conserves the resources of the Parties and the courts, and allows for a fair and
10 efficient resolution of this dispute.

11 24. Accordingly, a class action is superior to other available methods for the fair
12 and efficient adjudication of this controversy. Certification, therefore, is
13 appropriate under Rule 23(b)(1) or (b)(3) of the FEDERAL RULES OF CIVIL
14 PROCEDURE.

15 V. CAUSES OF ACTION

16 COUNT I

17 VIOLATION OF 49 U.S.C. §§ 32703(1)-(2); 32710 (AGAINST ALL 18 DEFENDANTS)

19 25. The preceding factual statements and allegations are incorporated herein by
20 reference.

21 26. Nissan's wrongful acts and practices, as described above, violates the federal
22 statute prohibiting odometer tampering, 49 U.S.C. §§ 32703(1)-(2); 32710 (the "Act").
23 Nissan has violated (and continues to violate) the Act by, inter alia:

24 a. Selling, using installing and/or having installed a software device that causes the
25 odometers of all Nissan vehicles to register a mileage greater than the mileage
26 actually travelled by the vehicle, as registered by the odometer within the designed
27 tolerance of the odometer manufacturer; and/or

28 b. Altering or having altered the odometer of all Nissan vehicles intending to
change the mileage registered by the odometer.

1 27. Nissan's wrongful conduct of designing, manufacturing, marketing, financing,
2 selling and/or leasing vehicles with altered odometers was engaged in with the intent
3 to defraud American consumers and deprive them of the benefits of their bargains.
4 Nissan's wrongful conduct violated (and continues to violate) 49 U.S.C. §§
5 32703(1)-(2); 32710.

6 COUNT II

7 VIOLATION OF CALIFORNIA BUS. & PROF. CODE § 17200 (AGAINST ALL
8 DEFENDANTS)

9 28. The preceding factual statements and allegations are incorporated herein by
10 reference.

11 29. Nissan's wrongful acts and practices, as described above, constitute unlawful,
12 unfair, and fraudulent business acts and practices within the meaning of California
13 Business & Professions Code § 17200, et seq.

14 30. Nissan's wrongful acts and practices, as described above, constitute
15 "fraudulent" business acts and practices in that the representations and omissions
16 described herein are false and/or likely to deceive potential and current customers.

17 31. Nissan's wrongful acts and practices, as described above, constitute "unfair"
18 business acts and practices in that the harm caused by Nissan's conduct outweighs
19 any utility of such conduct, and such conduct (i) offends public policy including but
20 not limited to the public policy articulated in statutes such as 49 U.S.C. §§
21 32703(1)-(2); 32710 and California Vehicle Code section 28050 and California
22 Vehicle Code section 28052, (ii) is immoral, unscrupulous, unethical, deceitful and
23 offensive, and/or (iii) has caused (and will continue to cause) substantial injury to
24 consumers such as Selth and the Class members.

25 31. Nissan's wrongful acts and practices are unlawful in that they violate inter alia
26 49 U.S.C. §§ 32703(1)-(2); 32710, California Vehicle Code section 28050 and
27 California Vehicle Code section 28052.

28 32. Nissan's unlawful, fraudulent, and unfair business acts and practices, as
described above, continue to this day and are ongoing. As a direct and proximate

1 result of Nissan's wrongful conduct, American consumers have been (and will
2 continue to be) harmed, for which they are entitled to damages.

3 33. Selth also brings this action pursuant to Sections 17203 and 17204 of the
4 California Business & Professions Code for injunctive relief to enjoin Nissan's
5 wrongful acts and practices, as described above.

6 COUNT III

7 VIOLATIONS OF CALIFORNIA BUSINESS AND PROFESSIONS

8 CODE § 17500

9 34. The preceding factual statements and allegations are incorporated herein
10 by reference.

11 35. Nissan's advertising of its warranty is deceptive in that misrepresents
12 the value of the warranty, and the true number of miles of warranty protection that
13 Nissan will provide, as well as the true number of miles at which excess mileage
14 leasing charges will be incurred.

15 36. This advertising is by its nature, unfair competition and unfair, deceptive,
16 untrue, or misleading advertising within the meaning of *California Business &*
17 *Professions Code* §17500 *et seq.* Such advertisements are likely to have deceived,
18 did deceive, and continue to deceive the intended audience.

19 37. The above-described false, misleading, and deceptive advertising conducted
20 by Defendants continues to have a tendency to deceive the intended audience in that
21 Defendants have failed to cease such advertising.

22 38. The misrepresentations and non-disclosures by Defendants of the
23 material facts detailed above constitute false and misleading advertising and therefore
24 constitute a violation of, *Business & Professions Code* §17500 *et seq.*

25 39. Plaintiff and the members of the Class have suffered injury and have lost
26 money or property as a result of Defendants' violations of *Business & Professions*
27 *Code* §17500 *et seq.*

28 40. Such conduct is ongoing and continues to this date. Plaintiff and the Class
Members are therefore entitled to the relief described below.

COUNT IV

VIOLATIONS OF CALIFORNIA CIVIL CODE § 1750 et seq.

(Against Defendants)

41. The preceding factual statements and allegations are incorporated herein by reference.

42. This cause of action is brought pursuant to California's Consumers Legal Remedies Act, *California Civil Code* §§ 1750, et seq. (the "CLRA").

43. Plaintiff and the Class members are individuals who purchased or leased vehicles with warranty protection from Defendants for family and house hold purposes. Plaintiff and the Class members are therefore consumers within the meaning of the CLRA, *California Civil Code* § 1761(d). Defendants are "persons" as defined under the CLRA, *California Civil Code* § 1761(c).

44. Defendants violated *inter alia* *California Civil Code* §§ 1770 (a)(5),(6), (7), and(14) by representing that their goods and services provide benefits that they do not provide, by representing that the goods and services are of a particular standard, quality or grade when they are not, and by representing that the transactions conferred rights and obligations that they did not confer.

45. As a result of the use and employment by Defendants of the aforementioned unlawful methods, acts and practices, Plaintiff and the Class Members suffered damages.

46. Plaintiff and the Class members seek restitution in the full amount of the money paid and/or disgorgement of Defendants' profits reasonably attributable to its unjust enrichment as a result of the misconduct alleged herein, and any other relief which the Court deems proper. Plaintiff and the Class members further intend to seek compensatory damages and, in light of Defendants' willful and conscious disregard for the rights of Plaintiff and the Class members and in light of Defendants' intentional and fraudulent concealment of material facts, Plaintiff and the members of the Class also intend to seek an award of punitive damages. Pursuant to Civil Code § 1782(a), Plaintiff will serve Defendants with notice of its

1 alleged violations of the CLRA by certified mail return receipt requested. If,
2 within 30 days after the date of such notification, Defendants fail to provide
3 appropriate relief for their violation of the CLRA, Plaintiff will amend this
4 Complaint to seek monetary (both compensatory and punitive) damages under the
5 CLRA.

6 47. Plaintiff and the Class Members request this Court to enjoin
7 Defendants from continuing to employ the deceptive methods, acts and practices
8 alleged above pursuant to Civil Code § 1780 (a)(2).

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COUNT V

COMMON LAW FRAUD

(AGAINST ALL DEFENDANTS)

12 48. The preceding factual statements and allegations are incorporated
13 herein by reference.

14 49. Defendants represented to Plaintiff and Class Members, expressly or by
15 implication that the warranty would provide more miles of warranty protection than
16 it does in fact provide, due to Defendants tampering with odometers, and that leased
17 cars can be driven for more miles without incurring charges than they in fact can.

18 50. The representations set forth above were in fact false, and were made by
19 Defendants with knowledge of their falsity.

20 51. Plaintiff and Class Members could not in the exercise of reasonable
21 diligence have discovered the falsity of the representations set forth above.

22 52. Plaintiff and Class Members relied upon the representations set forth
23 above in their decision to purchase or lease vehicles from Defendants.

24 53. As a proximate result of Defendants' misrepresentations, Plaintiff and
25 the Class Members were damaged in an amount to be proven at trial.

COUNT VI

NEGLIGENT MISREPRESENTATION

(AGAINST ALL DEFENDANTS)

54. The preceding factual statements and allegations are incorporated herein by

1 reference.

2 55. Defendants represented to Plaintiff and Class Members, expressly or by
3 implication that the warranty would provide more miles of warranty protection than
4 it does in fact provide, due to Defendants tampering with odometers.

5 56. The representations set forth above were in fact false, and Defendants
6 knew or should have known that the representations were false.

7 57. Plaintiff and Class Members could not in the exercise of reasonable
8 diligence have discovered the falsity of the representations set forth above.

9 58. Plaintiff and Class Members relied upon the representations set forth
10 above in their decision to purchase or lease vehicles from Defendants.

11 59. As a proximate result of Defendants' misrepresentations, Plaintiff and
12 the Class Members were damaged in an amount to be proven at trial.

13 **COUNT VII**

14 **UNJUST ENRICHMENT/RESTITUTION**

15 **(AGAINST ALL DEFENDANTS)**

16 60. The preceding factual statements and allegations are incorporated herein by
17 reference.

18 61. Nissan has been (and will continue to be) unjustly enriched by virtue of its
19 wrongful acts and practices (i.e., reduced warranty repair costs and excess lease
20 mileage charges), to the financial detriment of Selth and the Class members.
21 Nissan should be required to disgorge its ill-gotten gains to Selth and the Class.

22 **COUNT VIII**

23 **MONEY HAD AND RECEIVED**

24 **(AGAINST ALL DEFENDANTS)**

25 62. Plaintiff repeats and realleges the allegations set forth above, as though fully
26 set forth here.

27 63. Defendant has obtained money from Plaintiff and the class members by the
28 exercise of undue influence, menace or threat, compulsion or duress, and/or
mistake of law and/or fact.

1 64. As a result, Defendant has in its possession money which in equity belongs
2 to Plaintiff and the class members which should be refunded to Plaintiff and the
3 class members.

4 V. PRAYER FOR RELIEF

5 WHEREFORE, Plaintiff, on behalf of himself, all others similarly situated, and
6 the general public prays for judgment against Defendant as follows:

7 A. An order certifying the case as a class action and appointing Plaintiff
8 and his counsel to represent the class;

9 B. A judgment awarding Plaintiff and members of the class
10 compensatory damages in an amount to be proven at trial, together with
11 prejudgment interest at the maximum rate allowed by law, (at this time Plaintiff is
12 not seeking damages pursuant to the California Consumers Legal Remedies Act
13 but will amend his complaint later to seek such damages);

14 C. An order requiring Defendant to immediately cease its wrongful
15 conduct as set forth above; enjoining Defendant from automatically assessing a
16 damage waiver into rental agreements and from failing to disclose the optional
17 nature of the damage waiver.

18 D. Restitution and disgorgement of all amounts obtained by Defendant
as result of their misconduct;

19 E. Statutory penalties provided by law;

20 F. Reasonable attorneys fees as permitted by law including but not
21 limited to California Code of Civ. Proc. § 1021.5 and California Civil Code §
22 1780 (d)

23 G. Costs of this suit;

24 H. Punitive damages;

25 I. Statutory pre-judgment interest; and



26 J. Such other relief as the Court may deem proper.

27
28 Respectfully submitted,

1 Dated: November 30, 2007

THE KICK LAW FIRM, APC

By:

Taras P. Kick, Esq.
G. James Strenio, Esq.
Thomas A. Segal, Esq.
Attorneys for Plaintiff,

DEMAND FOR JURY TRIAL

Plaintiff, individually and on behalf of all others similarly situated, hereby demands a trial by jury.

Dated: November 30 2007

By: THE KICK LAW FIRM, APC
TKJ *JS*

Taras Kick
G. James Strenio
Thomas Segal
Counsel for Plaintiff

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION**

REBECCA WOMACK, Individually &
On Behalf of All Others Similarly
Situated,

Plaintiff,

V.

NISSAN NORTH AMERICA, INC., and
NISSAN MOTOR CO. LTD.,

Defendants

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CIVIL ACTION NO. 2:06-CV-479-DF

## JOINT REPORT ON RULE 26(f) CONFERENCE

During the weeks of October 15 and 22, 2007, the parties conferred about the matters contemplated by Rule 26(f) of the Federal Rules of Civil Procedure. Based on these conferences, the parties report to the Court as follows:

**1. Changes in Timing, Form, or Requirements of Rule 26(a) Disclosures:**

The parties see no need for changes to the form or requirements for Rule 26(a) disclosures.

Plaintiffs do not see the need for any changes to the timing for disclosures and do not believe there should be any staging of discovery.

Defendants believe that discovery should be conducted in stages. First, jurisdiction-related discovery contemplated by the Court's October 12, 2007 order should proceed first. After that, discovery necessary for the parties to proceed with certification and/or dispositive motions should commence with mandatory disclosures to be made on or before 30 days after completion of

jurisdictional discovery. In the event Nissan Motor Co., Ltd. ("NML") renews its Motion to Dismiss for Lack of Personal Jurisdiction within the time frame contemplated by the Court's October 12, 2007 Order, then mandatory disclosures by NML should not be required until 30 days after determination of that motion. Discovery related only to merits of the case should be stayed pending a determination on class certification.

**2. Date When Rule 26(a) Disclosures Were or Will Be Made:**

Consistent with the parties' positions described above, Plaintiff contends that Rule 26(a) disclosures should be made by all parties on or before November 30, 2007. Defendants believe the date should be January 31, 2008, subject to possible abatement as to NML in the event it renews its Motion to Dismiss for Lack of Personal Jurisdiction within the time frame contemplated by the Court's October 12, 2007 Order.

**3. Subjects on Which Discovery May Be Needed:**

Based on the Court's October 12, 2007 Order, the parties agree that discovery related to jurisdiction will be needed, although NML contends that discovery related to specific jurisdiction is not warranted for the reasons explained in more detail in its Motion to Amend and/or Clarify Order Concerning Jurisdictional Discovery (Document #50).

The parties also agree that discovery will be needed on Rule 23(a) factors (*e.g.*, the size of the proposed class, the existence of common factual and legal issues, typicality of Womack's claim and the adequacy of Womack as class representative); Rule 23(b) factors of predominance and superiority; odometer design relevant to vehicles within the alleged class (including specifications, testing, performance and engineering documents); odometer error complaints; and odometer performance including vehicles owned by Plaintiff and other putative class member.

Plaintiff also believes Defendants' electronic information systems, actual and projected warranty costs associated with the class vehicles; Defendants' warranty cost savings generated by the odometer error; and Defendants' collection of lease mileage penalties as a result of the odometer error are proper subjects of discovery at this stage of the case. Defendants consider financial matters concerning warranty and lease costs to be related solely to merits issues so discovery should be stayed pending a determination by the Court on class certification.

**4. Preservation of Discoverable Information:**

Plaintiff will preserve all hard copy and electronic records concerning, and relevant components for, her vehicle as well as any hard copy or electronic records concerning, and relevant components for, any other 2004-2007 model year Nissan or Infiniti vehicles in her possession, custody or control. Defendants have contacted relevant departments and personnel reasonably expected to have documents and information concerning odometer system design and testing and instructed the relevant personnel to preserve hard copy and electronic files, including emails, relating to odometer systems for vehicles within the alleged class. Defendants have also verified that customer affairs data and warranty claims data for these vehicles is maintained.

Plaintiff understands that Defendants will continue routine recycling of back-up tapes and other media. With the exception of hard copy and electronic records described in the prior paragraph, Defendants will continue other normal business activities including but not limited to routine deletion, compression of data, saving of new data, installation of new software and files, and changes to system architecture. All such activities will be conducted in good faith with full recognition of the parties' mutual obligation to locate and preserve relevant documents.

5. **Production Of Electronically Stored Information:**

Plaintiff anticipates she will request Defendants to disclose or produce a number of items from electronic or computer-based media. Defendants expect Plaintiff to produce relevant, electronically stored information.

Plaintiff and Defendants will produce static images of electronically stored documents and files in Bates-labeled, single-page Tag Image File Format (.tif), which may be designated "confidential" pursuant to the terms of the Protective Order. For the static images produced, the producing party will maintain electronically stored files in native format (e.g. Excel, Word, PowerPoint). The parties will meet and confer regarding the possible need for production of additional electronically stored information in its native format following the initial production of static images. The parties will submit any unresolved disputes to the Court by appropriate motion.

Certain other electronic data, such as consumer affairs and warranty claim data, is maintained on mainframe computers or servers. Access to the data requires that programs be written to query the databases. Plaintiffs and Defendants agree to work together to develop queries to obtain relevant data, subject to protecting the privacy rights of Defendants' customers.

6. **Date By Which Class Certification Discovery Should Be Completed:**

September 15, 2008.

7. **Any Needed Changes In Limitations Imposed By The Federal Rules Of Civil Procedure:**

None.

8. **Any Orders, e.g. Protective Orders, Which Should Be Entered:**

The parties agree that the entry of a Protective Order is appropriate and are working on an order that closely tracks the standard Eastern District protective order. The parties will submit an agreed order at the November 5, 2007 Scheduling Conference.

9. **Proposed Deadline For Joining Other Parties And Amending The Pleadings:**

All parties should be joined by January 31, 2008 and pleadings amended by March 31, 2008.

10. **Proposed Deadline For Filing Any Dispositive Motions That Are To Be Considered Prior to or In Connection With Class Certification:**

June 1, 2008.

11. **Proposed Deadline For Filing Motion For Class Certification:**

July 1, 2008. Any expert witnesses to be relied upon must be disclosed and report provided by this date as well.

12. **Proposed Deadline For Filing Response to Motion For Class Certification:**

August 15, 2008. Any expert witnesses to be relied upon must be disclosed and report provided by this date as well.

13. **Proposed Date For Class Certification Hearing:**

October 15, 2008.

14. **Pending Motions:**

Defendant NML has filed a Motion to Modify and/or Clarify Order Concerning Jurisdictional Discovery which it requests the Court take up at the Scheduling Conference. Plaintiff agrees the motion should be decided as soon as possible but may not be able to file a



complete response prior to the Scheduling Conference. Plaintiff will make every effort to brief the Court on her position prior to the hearing so that the Court may address the motion at that time.

**15. Other Matters:**

The parties believe that deadlines concerning merits discovery, any further dispositive motions, and a pretrial schedule should be addressed only after the Court has made a determination on class certification.

Respectfully Submitted,

/s/ Stephen Woodfin  
Stephen Woodfin  
With permission of lead attorney  
Texas Bar# 21930400  
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**ATTORNEYS FOR DEFENDANT  
NISSAN NORTH AMERICA, INC. AND  
NISSAN MOTOR CO., LTD.**

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing Rule 26(f) Report was served on all counsel of record via electronic means in accordance with Local Rule CV-5 (e) on the 29th day of October 2007.

/s/ E. Paul Cauley, Jr.

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION**

REBECCA WOMACK, Individually &  
on Behalf of All Others Similarly  
Situating,

Plaintiff,

v.

(1) NISSAN NORTH AMERICA, INC.,  
(2) NISSAN MOTOR CO., LTD.,

Defendants.

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No. 2:06-CV-479(Df)

**PLAINTIFF'S FIRST REQUESTS FOR ADMISSION, INTERROGATORIES &  
REQUESTS FOR PRODUCTION OF DOCUMENTS**

**TO:** Nissan North America, Inc. by and through its attorney of record, Mr. Paul Cauley, Jr., at Sedgwick, Detert, Moran & Arnold, 1717 Main Street, Suite 5400, Dallas, Texas 75201.

Plaintiff hereby propounds the following Requests for Admissions, Interrogatories and Requests for Admissions pursuant to Rules 33, 34 and 36, Fed. R. Civ. P., to be answered within thirty-three (33) days after service hereof and to be timely supplemented as required by law.

Respectfully submitted,

\_\_\_\_\_/s/\_\_\_\_\_  
James A. Holmes (Attorney in Charge)  
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***ATTORNEYS FOR THE PLAINTIFF CLASS***

**CERTIFICATE OF SERVICE**

Plaintiff's First Request for Admissions, Interrogatories and Request for Production has been served upon Nissan North America, Inc. by and through its attorney of record, Mr. Paul Cauley, Jr., at Sedgwick, Detert, Moran & Arnold, 1717 Main Street, Suite 5400, Dallas, Texas 75201, via facsimile and electronic mail on this, the 21st day of November 2007.

---

James A. Holmes



**DEFINITIONS**

1. The term "YOU," "YOUR," and "YOURS," as used herein, shall mean NISSAN NORTH AMERICA, INC. and its subsidiaries or related entities including all its agents, servants and employees.
2. The term "NISSAN," as used herein, shall refer to Nissan North America, Inc., Nissan Motor Co., Ltd. and all related or affiliated entities in which either of them owns a controlling interest.
3. The term "CLASS," as used herein, shall have that meaning assigned to it in Plaintiff's Original Complaint and all amendments and supplements thereto.
4. The term "IDENTIFY," with regard to a natural person, shall mean to state the person's full name, address, and phone number.
5. The term "IDENTIFY," when used in regard to a corporation or entity, shall mean to state the entity's proper name, line of business, the full address of its principal place of business, and phone number.
6. The term "CLASS VEHICLES," as used herein, shall mean all Nissan and Infinity brand automobiles, trucks and sport utility vehicles sold or leased by NISSAN in the United States of America since November 1, 2004.
7. The term "EXPECTED ODOMETER ERROR," as used herein shall mean the percentage of error expected to be present in the odometer system's distance calculation under nominal conditions (*e.g.*, properly sized and inflated new tires, proper load distribution, dry pavement, and highway speeds of 70 mph). If necessary, the term includes a range of calculations based on differing vehicle speeds.

8. The term "DOCUMENT," as used herein, shall mean all written, typed, or printed matter, and all electronically stored information as referenced in Rule 26(b)(2)(B), Fed. R. Civ. P., including all magnetic or other records or documentation of any kind or description including, without limitation, letters, correspondence, telegrams, memoranda, notes, records, minutes, agreements, records, notations of telephone or personal conversations, conferences, inter-office or intra-office communications, electronic mail (email), electronic messaging, microfilm, bulletins, alerts, circulars, pamphlets, photographs, facsimiles, invoices, tape recording, computer printouts, data stored on hard drives, tapes or other medium and work sheets. The term specifically includes all drafts and copies not identical to the originals, all photographs and graphic matter, however produced or reproduced, all compilations of data from which information can be obtained and all writings and recordings of any type of nature, in YOUR actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared to you.

**REQUESTS FOR ADMISSIONS, INTERROGATORIES AND  
REFEQUESTS FOR PRODUCTION**

**REQUEST FOR ADMISSION NO. 1:**

Admit that the CLASS is so numerous that individual joinder of all members is impracticable.

**RESPONSE:**

**INTERROGATORY NO. 1:**

Please state all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 1:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS

- (A) Reflecting the number of each model of CLASS VEHICLE sold in each state of the United States for each calendar year since November 1, 2004;
- (B) Reflecting the number of each model of CLASS VEHICLE leased in each
- (C) The number of members of the CLASS currently residing in each state of the United States;
- (D) Reflecting complaints to NISSAN regarding inaccurate registration of mileage by odometers in Nissan and Infiniti brand vehicles sold in the United States since November 1, 2004.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 2:**

Admit that there are questions of fact and law common to all members of the  
CLASS.

**RESPONSE:**

**INTERROGATORY NO. 2:**

Please state all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 2:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s)  
including all DOCUMENTS reflecting

- (A) NISSAN's odometer error tolerance for each CLASS VEHICLE;
- (B) The identity of the individual or department with responsibility for selection of NISSAN's odometer error tolerance in each CLASS VEHICLE;
- (C) The legal or engineering basis for NISSAN's selection of its odometer error tolerance in each CLASS VEHICLE;
- (D) The EXPECTED ODOMETER ERROR for each CLASS VEHICLE;
- (E) The identity of the individual or department with responsibility for selection of NISSAN's EXPECTED ODOMETER ERROR in each CLASS VEHICLE;
- (F) The legal or engineering basis for NISSAN's selection of its EXPECTED ODOMETER ERROR in each CLASS VEHICLE;

- (G) NISSAN's error tolerance for trip calculators or trip computers provided as part of an on-board navigation system in CLASS VEHICLES;
- (H) The identity of the individual or department with responsibility for selection of NISSAN's error tolerance for trip calculators or trip computers provided as part of an on-board navigation system in CLASS VEHICLES;
- (I) The legal or engineering basis for NISSAN's selection of its error tolerance for trip calculators or trip computers provided as part of an on-board navigation system in CLASS VEHICLES;
- (J) NISSAN's knowledge of complaints of errors in its odometers, trip calculators and/or trip computers in Nissan and Infiniti brand automobiles;
- (K) NISSAN's response to complaints of errors in its odometers, trip calculators and/or trip computers in Nissan and Infiniti brand automobiles;
- (L) Correspondence or communication generated and/or received by NISSAN concerning error in its odometers, trip calculators and/or trip computers in Nissan and Infiniti brand automobiles;
- (M) Consideration or discussion by NISSAN of the financial impact of odometer over-registration;
- (N) Representations by NISSAN that odometers, trip calculators and trip computers in CLASS VEHICLES would accurately display the distance traveled by the automobile.

***RESPONSE:***

**REQUEST FOR ADMISSION NO. 3:**

Admit that the claims of REBECCA WOMACK are typical of the claims of the  
CLASS as a whole.

**RESPONSE:**

**INTERROGATORY NO. 3:**

Please state all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 3:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s).

**RESPONSE:**



**REQUEST FOR ADMISSION NO. 4:**

Admit that REBECCA WOMACK will adequately protect the interests of the  
CLASS.

***RESPONSE:***

**INTERROGATORY NO. 4:**

Please state all facts in support of YOUR Response.

***ANSWER:***

**REQUEST FOR PRODUCTION NO. 4:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s).

***RESPONSE:***

**REQUEST FOR ADMISSION NO. 5:**

Admit that questions of law or fact common the CLASS predominate over any questions affecting only individual members of the CLASS.

**RESPONSE:**

**INTERROGATORY NO. 5:**

Please state all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 5:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) The design of the odometer, trip calculator and trip computer systems in CLASS VEHICLES including those DOCUMENTS which evidence
- a. The method used to calculate distance including the source of the data from which calculations are made, each stage of data transfer and/or processing and the calculations made to convert source data into displayed distance;
  - b. The location of any sensors which actuate the odometer;
  - c. The selection of the number of sensor pulses per mile;
  - d. The ratio between tire revolutions and the speed sensor pulses; and
  - e. The location within the system where distance calculations are performed.

- (B) The testing of the odometer systems in CLASS VEHICLES;
- (C) The design of all trip computer systems or trip calculators included in any on-board navigation systems including DOCUMENTS which evidence the
  - a. Manner in which any on-board navigation systems calculate distance;
  - b. Identity of the manufacturer or supplier of all on-board navigation system components and software;
  - c. Error tolerance of any such manufacturer/supplier;
  - d. Portion of the on-board navigation system that calculates distance based on inputs from the global positioning system;
  - e. Agreements between NISSAN and any manufacturer or supplier of global positioning systems or components in CLASS VEHICLES;
  - f. Communications between NISSAN and any such manufacturer or supplier regarding actual or expected errors in distance calculations by the on-board navigation system;
  - g. Any complaints or inquiries regarding the distance calculations displayed by the on-board navigation system;
- (D) NISSAN's ISO 9000 log reflecting reports of over-registration by odometers, trip calculators and trip computers in Nissan and Infiniti brand vehicles;
- (E) The tolerance of other automobile manufacturers for error in odometers, trip calculators and/or trip computers.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 6:**

Admit that a class action is superior to other available methods for the fair and efficient adjudication of the controversy in this case.

**RESPONSE:**

**INTERROGATORY NO. 6:**

Regardless of YOUR Response to the forgoing Request, please state:

- (A) All facts in support of YOUR response to Request No. 6; and
- (B) YOUR best estimate of the retail cost to repair or replace the odometer in each CLASS VEHICLE to eliminate over-registration of miles under nominal conditions.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 6:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) The cost to NISSAN (parts and labor) to repair or replace the odometer systems in CLASS VEHICLES to eliminate over-registration of distance under nominal conditions;
- (B) The cost to owners or lessees of CLASS VEHICLES to repair or replace odometers in CLASS VEHICLES to eliminate over-registration of distance under nominal conditions;

- (C) Any analysis of warranty cost savings to NISSAN as a result of odometer over-registration;
- (D) Any analysis of warranty costs to NISSAN of odometer under-registration;
- (E) Payment of compensation or other economic benefit by NISSAN as a function or result of warranty cost savings or lease mileage penalty collections; and
- (F) Any analysis of warranty costs in CLASS VEHICLES as a function of odometer mileage over-registration.

***RESPONSE:***

**REQUEST FOR ADMISSION NO. 7:**

Admit that YOU are the manufacturer of the odometer instrument installed in each CLASS VEHICLE.

**RESPONSE:**

**INTERROGATORY NO. 7:**

Regardless of YOUR Response to the forgoing Request, please

- (A) IDENTIFY every manufacturer of odometers in CLASS VEHICLES; and
- (B) State the “designed [error] tolerance” of each such entity.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 7:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS

- (A) Describing all instruction given to each such manufacturer by NISSAN with regard to error tolerance in odometer instruments designed for CLASS VEHICLES;
- (B) Reflecting communications between NISSAN and any such manufacturer regarding designed or actual error in odometer units designed for CLASS VEHICLES;
- (C) Describing or reflecting any action taken to reduce or eliminate error in odometer units designed for CLASS VEHICLES;

- (D) Reflecting the design specifications for manufacture of odometer units for  
CLASS VEHICLES.

***RESPONSE:***

**REQUEST FOR ADMISSION NO. 8:**

Admit that each CLASS VEHICLE was designed with an identical odometer error tolerance.

**RESPONSE:**

**INTERROGATORY NO. 8:**

Regardless of YOUR Response to the forgoing Request, please state the odometer error tolerance applicable to each CLASS VEHICLE for each of the 2004-08 model years.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 8:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s).

**RESPONSE:**



**REQUEST FOR ADMISSION NO. 9:**

Admit that Nissan Motor Co., Ltd. selected the odometer error tolerance for each CLASS VEHICLE.

**RESPONSE:**

**INTERROGATORY NO. 9:**

Regardless of YOUR Response to the forgoing Request, please IDENTIFY the individual or entity with responsibility for the selection of the odometer error tolerance for CLASS VEHICLES for each of the 2004-08 model years.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 9:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) Communications regarding the selection of NISSAN's error tolerance in odometers, trip calculators and trip computers;
- (B) The legal and engineering basis for such selections;
- (C) Any analysis of the effects of such selections;
- (D) Any proposals to change the selections; and
- (E) Any analysis of the potential legal ramifications of such selections.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 10:**

Admit that the EXPECTED ODOMETER ERROR is identical for each CLASS VEHICLE.

**RESPONSE:**

**INTERROGATORY NO. 10:**

Regardless of YOUR Response to the forgoing Request, please

- (A) State the EXPECTED ODOMETER ERROR for each model of CLASS VEHICLE for each of the 2004-08 model years;
- (B) IDENTIFY the individual or entity with responsibility for the selection of the EXPECTED ODOMETER ERROR for each model of CLASS VEHICLES for each of the 2004-08 model years;
- (C) Describe the manner in which such individual or entity selected the EXPECTED ODOMETER ERROR for each model of CLASS VEHICLES for each of the 2004-08 model years; and
- (D) Describe all actions taken by YOU or Nissan Motor Co., Ltd. to verify that the CLASS VEHICLE odometers performed in accordance with the EXPECTED ODOMETER ERROR.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 10:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) Communications regarding the selection of NISSAN's EXPECTED ODOMETER ERROR;
- (B) The legal and engineering basis for such selection;
- (C) Any analysis of the effects of such selection;
- (D) Any proposals to change the EXPECTED ODOMETER ERROR for any Nissan or Infiniti brand automobile; and
- (F) Any analysis of the potential legal ramifications of such selection.

***RESPONSE:***

**REQUEST FOR ADMISSION NO. 11:**

Admit that owners and lessees of CLASS VEHICLES are not afforded repairs under the applicable vehicle warranties after their odometer reading exceeds the warranty's mileage limitation.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Please state all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 11:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) Terms under which NISSAN has or will agree to provide owners and lessees of CLASS VEHICLES with warranty repairs after they have ostensibly exceeded the warranty's mileage limitation;
- (B) The dollar value of such repairs provided to CLASS MEMBERS for each model of CLASS VEHICLE in 2004, 2005, 2006, 2007 and 2008 for each state in the United States; and
- (C) The IDENTITY of the individual or department with responsibility for approving such repairs for CLASS MEMBERS.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 12:**

Admit that all lessees of CLASS VEHICLES who exceed the mileage limitation contained in their lease contracts are charged excess mileage charges of \$0.15 per mile.

**RESPONSE:**

**INTERROGATORY NO. 12:**

Please state all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 12:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) The terms under which owners and lessees of CLASS VEHICLES can exceed their contractual mileage limitations without being charged excess mileage charges;
- (B) The IDENTITY of the individual or department authorized to allow owners and lessees of CLASS VEHICLES to exceed their contractual mileage limitations without being charged excess mileage charges;
- (C) The contractual rate (per mile) of excess mileage charges assessed to CLASS MEMBERS who have exceeded their mileage limitations;

- (D) The dollar value of such charges collected from CLASS MEMBERS for each model of CLASS VEHICLE in 2004, 2005, 2006, 2007 and 2008 for each state in the United States;
- (E) The dollar value of charges owed by CLASS MEMBERS but waived by NISSAN in 2004, 2005, 2006, 2007 and 2008 for each state in the United States; and
- (F) IDENTIFY the individual or department with responsibility for approving such waivers for CLASS MEMBERS.

***RESPONSE:***

**REQUEST FOR ADMISSION NO. 13:**

Admit that a portion of the consideration price by owners and lessees of CLASS VEHICLES represents the cost to purchase warranty protection.

**RESPONSE:**

**INTERROGATORY NO. 13:**

Please all facts in support of YOUR Response.

**ANSWER:**

**REQUEST FOR PRODUCTION NO. 13:**

Please produce all DOCUMENTS in support of YOUR Response and/or Answer(s) including all DOCUMENTS reflecting

- (A) The cost to the consumer of each manufacturer's warranty on every model year of CLASS VEHICLE in 2004, 2005, 2006, 2007 and 2008;
- (B) The portion of the Manufacturer's Suggested Retail Price which represents warranty costs to the consumer;
- (C) The manner in which NISSAN calculates the portion of the Manufacturer's Suggested Retail Price which represents warranty costs to the consumer;
- (D) The calculation of warranty reserves for CLASS VEHICLES;
- (E) The cost to NISSAN of manufacturer's warranties on CLASS VEHICLES;
- (F) Warranty savings to NISSAN due to odometer over-registration.

**RESPONSE:**

**DISTRIBUTION OF PENDING MDL DOCKETS**  
(AS OF NOVEMBER 6, 2007)

| District | JUDGE                                                                                                                                                                                                                                                                                                                                                                                                                                                                            | LITIGATION                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | Actions Pending                                                                                           | Total Number of Actions                                                                                      |
|----------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------|
| ARE      | D.J. William R. Wilson, Jr.                                                                                                                                                                                                                                                                                                                                                                                                                                                      | MDL-1507 IN RE: Prempro Products Liability Litigation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | 3,600                                                                                                     | 4,393                                                                                                        |
| ARW      | D.J. Harry F. Barnes                                                                                                                                                                                                                                                                                                                                                                                                                                                             | MDL-1832 IN RE: Pilgrim's Pride Fair Labor Standards Act Litigation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     | 15                                                                                                        | 15                                                                                                           |
| AZ       | Sr.J. Paul G. Rosenblatt                                                                                                                                                                                                                                                                                                                                                                                                                                                         | MDL-1541 IN RE: Allstate Insurance Co. Fair Labor Standards Act Litigation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              | 4                                                                                                         | 5                                                                                                            |
| CAC      | D.J. David O. Carter<br>D.J. Dale S. Fischer<br>D.J. R. Gary Klausner<br>D.J. R. Gary Klausner<br><br>Sr.J. Mariana R. Pfaelzer<br>D.J. Manuel L. Real<br>D.J. Christina A. Snyder<br>D.J. Christina A. Snyder<br>C.J. Alicemarie H. Stotler<br>D.J. Stephen V. Wilson                                                                                                                                                                                                           | MDL-1807 IN RE: Wachovia Securities, LLC, Wage and Hour Litigation<br>MDL-1822 IN RE: Bluetooth Headset Products Liability Litigation<br>MDL-1816 IN RE: Katz Interactive Call Processing Patent Litigation<br>MDL-1864 IN RE: Charlotte Russe, Inc., Fair and Accurate Credit Transactions Act (FACTA) Litigation<br>MDL-1574 IN RE: Paxil Products Liability Litigation<br>MDL-1737 IN RE: American Honda Motor Co., Inc., Oil Filter Products Liability Litigation<br>MDL-1671 IN RE: Reformulated Gasoline (RFG) Antitrust & Patent Litigation<br>MDL-1825 IN RE: Midland National Life Insurance Co. Annuity Sales Practices Litigation<br>MDL-1803 IN RE: Banc of America Investment Services, Inc., Overtime Pay Litigation<br>MDL-1745 IN RE: Live Concert Antitrust Litigation                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                 | 17<br>27<br>51<br>3<br><br>6<br>5<br>9<br>2<br>5<br>22                                                    | 20<br>27<br>52<br>3<br><br>149<br>5<br>12<br>2<br>5<br>22                                                    |
| CAN      | D.J. William H. Alsup<br>D.J. Sandra Brown Armstrong<br>D.J. Sandra Brown Armstrong<br>D.J. Charles R. Breyer<br><br>D.J. Charles R. Breyer<br>D.J. Phyllis J. Hamilton<br>D.J. Susan Y. Illston<br>D.J. Martin J. Jenkins<br>D.J. Marilyn Hall Patel<br>D.J. Marilyn Hall Patel<br>D.J. Marilyn Hall Patel<br>C.J. Vaughn R. Walker<br>C.J. Vaughn R. Walker<br>D.J. James Ware<br>D.J. Claudia Wilken<br>D.J. Jeffrey S. White<br>D.J. Ronald M. Whyte<br>D.J. Ronald M. Whyte | MDL-1826 IN RE: Graphics Processing Units Antitrust Litigation<br>MDL-1781 IN RE: Cintas Corp. Overtime Pay Arbitration Litigation<br>MDL-1809 IN RE: Terminix Employment Practices Litigation<br>MDL-1699 IN RE: Bextra and Celebrex Marketing, Sales Practices and Products Liability Litigation<br><br>MDL-1793 IN RE: International Air Transportation Surcharge Antitrust Litigation<br>MDL-1486 IN RE: Dynamic Random Access Memory (DRAM) Antitrust Litigation<br>MDL-1827 IN RE: TFT-LCD (Flat Panel) Antitrust Litigation<br>MDL-1648 IN RE: Rubber Chemicals Antitrust Litigation<br>MDL-1369 IN RE: Napster, Inc., Copyright Litigation<br>MDL-1770 IN RE: Wells Fargo Home Mortgage Overtime Pay Litigation<br>MDL-1841 IN RE: Wells Fargo Loan Processor Overtime Pay Litigation<br>MDL-1606 IN RE: Deep Vein Thrombosis Litigation<br>MDL-1791 IN RE: National Security Agency Telecommunications Records Litigation<br>MDL-1665 IN RE: Acacia Media Technologies Corp. Patent Litigation<br>MDL-1819 IN RE: Static Random Access Memory (SRAM) Antitrust Litigation<br>MDL-1761 IN RE: Ditropan XL Antitrust Litigation<br>MDL-1423 IN RE: Cygnus Telecommunications Technology, LLC, Patent Litigation<br>MDL-1754 IN RE: Apple iPod nano Products Liability Litigation | 51<br>71<br>2<br>1,711<br><br>101<br>25<br>135<br>10<br>1<br>4<br>2<br>8<br>48<br>22<br>81<br>5<br>3<br>5 | 52<br>71<br>2<br>1,964<br><br>102<br>44<br>135<br>14<br>19<br>4<br>2<br>81<br>49<br>23<br>82<br>6<br>30<br>8 |



| District | JUDGE                                                                                           | LITIGATION                                                                                                                                                                                                                                                                                                | Actions Pending     | Total Number of Actions |
|----------|-------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|-------------------------|
| PAM      | D.J. Thomas I. Vanaskie                                                                         | MDL-1556 IN RE: Pressure Sensitive Labelstock Antitrust Litigation                                                                                                                                                                                                                                        | 11                  | 11                      |
| PAW      | D.J. Gary L. Lancaster                                                                          | MDL-1674 IN RE: Community Bank of Northern Virginia Mortgage Lending Practices Litigation                                                                                                                                                                                                                 | 7                   | 8                       |
| RI       | C.J. Mary M. Lisi                                                                               | MDL-1842 IN RE: Kugel Mesh Hernia Patch Products Liability Litigation                                                                                                                                                                                                                                     | 104                 | 104                     |
| SC       | Sr.J. C. Weston Houck<br>C.J. David C. Norton                                                   | MDL-1865 IN RE: Household Goods Movers Antitrust Litigation<br>MDL-1785 IN RE: Bausch & Lomb Inc. Contact Lens Solution Products Liability Litigation                                                                                                                                                     | 2<br>223            | 2<br>225                |
| TNE      | C.J. Curtis L. Collier                                                                          | MDL-1552 IN RE: UnumProvident Corp. Securities, Derivative & "ERISA" Litigation                                                                                                                                                                                                                           | 19                  | 28                      |
| TNM      | C.J. Todd J. Campbell<br>Sr.J. John T. Nixon                                                    | MDL-1760 IN RE: Aredia and Zometra Products Liability Litigation<br>MDL-1537 IN RE: Nortel Networks Corp. "ERISA" Litigation                                                                                                                                                                              | 316<br>6            | 321<br>6                |
| TNW      | D.J. J. Daniel Breen                                                                            | MDL-1551 IN RE: Reciprocal of America (ROA) Sales Practices Litigation                                                                                                                                                                                                                                    | 15                  | 15                      |
| TXE      | D.J. Leonard E. Davis<br>D.J. T. John Ward                                                      | MDL-1512 IN RE: Electronic Data Systems Corp. Securities & "ERISA" Litigation<br>MDL-1530 IN RE: Fleming Companies Inc. Securities & Derivative Litigation                                                                                                                                                | 4<br>10             | 29<br>22                |
| TXN      | C.J. A. Joe Fish<br>D.J. Sidney A. Fitzwater<br>D.J. Terry R. Means                             | MDL-1578 IN RE: UICI "Association-Group" Insurance Litigation<br>MDL-1214 IN RE: Great Southern Life Insurance Company Sales Practices Litigation<br>MDL-1875 IN RE: RadioShack Corp. "ERISA" Litigation                                                                                                  | 2<br>1<br>4         | 28<br>25<br>4           |
| TXS      | D.J. Vanessa D. Gilmore<br>D.J. Melinda Harmon<br>D.J. Lynn N. Hughes<br>D.J. Janis Graham Jack | MDL-1646 IN RE: Testmasters Trademark Litigation<br>MDL-1446 IN RE: Enron Corp. Securities, Derivative & "ERISA" Litigation<br>MDL-1609 IN RE: Service Corporation International Securities Litigation<br>MDL-1810 IN RE: MERSCORP Inc., et al., Real Estate Settlement Procedures Act (RESPA) Litigation | 1<br>111<br>1<br>13 | 6<br>196<br>4<br>30     |
| UT       | D.J. Dale A. Kimball                                                                            | MDL-1546 IN RE: Medical Waste Services Antitrust Litigation                                                                                                                                                                                                                                               | 1                   | 8                       |
| VAE      | D.J. Leonie M. Brinkema                                                                         | MDL-1705 IN RE: Xybernaut Corp. Securities Litigation                                                                                                                                                                                                                                                     | 9                   | 10                      |
| WAW      | D.J. Barbara Jacobs Rothstein                                                                   | MDL-1407 IN RE: Phenylpropanolamine (PPA) Products Liability Litigation                                                                                                                                                                                                                                   | 208                 | 3,376                   |
| WY       | C.J. William F. Downes                                                                          | MDL-1293 IN RE: Natural Gas Royalties Qui Tam Litigation                                                                                                                                                                                                                                                  | 75                  | 83                      |